F I S C A L I M P A C T R E P O R T

SPONSOR Wirth
ORIGINAL DATE 03/01/13
LAST UPDATED
HB

SHORT TITLE Taxation of Intangible Sales
SB 549

ANALYST Smith

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY13	**FY14**	**FY15**	**FY16**	**FY17**		
Unknown						General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Bill 549 amends Section 7-4-18 of the Uniform Division of Income for Tax Purposes Act to determine when a sale or an intangible or service is sourced to New Mexico. The Taxation and Revenue Department (TRD) is given specific authority to promulgate rules to carry out the purpose of this section.

Effective Date: No date specified

FISCAL IMPLICATIONS

Currently, if all or a plurality of "effort" in creating the intangible is attributed in-state, then 100 percent of intangible's value is apportioned to New Mexico. The bill proposes to apportion the exact percentage amount. The TRD does not have the data needed to estimate the fiscal impact or even to indicate whether this bill has a broadly positive or negative impact on revenues.

SIGNIFICANT ISSUES

Currently, sales, other than sales of tangible personal property, are considered to be in New Mexico if

(1) the income-producing activity is performed in this State; or
(2) the income-producing activity is performed both in and outside this State and a greater proportion of the income-producing activity is performed in this State than in any other State, based on costs of performance (COP).

The issue with this treatment is that

(1) The cost of performance is difficult to determine, and
(2) "All or nothing" assignment of sales based on the state with greatest cost of performance is not a reasonable treatment.
(3) COP rule sort of duplicates the function of property and payroll.

A number of states have begun to address these concerns using different methods. Some of the methods used by the different states with respect to intangible sales are listed below.

(1) Where Benefit is Received
    a. California
    b. Iowa
    c. Michigan
    d. Ohio
    e. Utah
    f. Wisconsin
(2) Where Service is Delivered
    a. Alabama
(3) Where Customer is Located
    a. Georgia
    b. Maryland
    c. Oklahoma
(4) Where Service is Received
    a. Illinois
    b. Maine
    c. Minnesota
(5) Where Service is Performed
    a. Connecticut
    b. New Jersey
    c. New York
    d. Rhode Island
    e. South Carolina
    f. Texas

The MTC proposed language has the following benefits

(1) It moves towards using a market sourcing basis instead of a cost of performance basis for determining intangible sales, which is more appropriate when determining sales
(2) It allows for reasonable approximation where necessary
(3) Each receipt is sourced to the extent the market is in the state instead of the existing all or nothing approach

(4) COP approach has one broad rule for all transaction types. Instead this allows for difference sourcing rules for the different transaction types
   a. Real Property receipts are sourced to where the property is located
   b. Tangible Personal Property receipts (other than sales) are sourced to where the property is located
   c. Service receipts are sourced to where the service is delivered, and
   d. Intangible property receipts sourced to where the property is used.

Determining the effect of the new rules on the sales factor used in the apportionment formula is difficult. The level of detail needed to analyze this is not available in the New Mexico corporate income tax data.

PERFORMANCE IMPLICATIONS

The Legislative Finance Committee (LFC) tax policy of accountability is <u>not</u> met since the TRD is <u>not</u> required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy**: Revenue should be adequate to fund needed government services.
2. **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity**: Different taxpayers should be treated fairly.
4. **Simplicity**: Collection should be simple and easily understood.
5. **Accountability**: Preferences should be easy to monitor and evaluate

SS/svb